

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REPEAL OF EXEMPTION FOR REORGANIZATION FILING [199 IAC 32.2(4)]	DOCKET NO. RMU-04-1
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ORDER COMMENCING RULE MAKING

(Issued February 18, 2004)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, 476.76, and 476.77 (2003), the Utilities Board proposes to rescind subrule 199 IAC 32.2(4) which is reflected in the "Notice of Intended Action" attached hereto and incorporated herein by reference. This proceeding has been identified as Docket No. RMU-04-1.

Iowa Code § 476.77 provides that a reorganization of a public utility shall not take place if the Utilities Board (Board) disapproves. A public utility that proposes to reorganize is required to file a proposal for reorganization with the Board. Subsection 476.77(4) states that the Board may adopt rules that exempt a public utility or class of public utility or class of reorganization from the Board's review.

Pursuant to that authorization, the Board adopted subrule 199 IAC 32.2(4) to exempt from review reorganizations involving acquisitions outside the United States if the public utility's Iowa revenues are not more than 10 percent of its gross utility revenues (as long as the public utility maintains investment grade credit ratings). The subrule was adopted to allow public utilities the ability to make certain foreign

acquisitions without delay associated with obtaining Board review. The subrule has been amended from time to time and now states as follows:

Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross utility revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to this exemption within 30 days of the closing of the transaction. The notification shall include the dollar amount of the acquisition, a description of the acquisition, and a description of the financing. The public utility shall file on or before March 1 of each year an annual summary of its foreign acquisitions and recent credit rating reports from all major credit rating services.

However, this exemption does not apply if the public utility does not hold an investment grade credit rating from two major credit rating services or if its proposed direct expenditure on the acquisition, including guarantees and financing with recourse to the public utility, exceeds 15 percent of the net book value of the public utility's assets. If the exemption does not apply, the acquisition may not take place without the filing of a proposal for reorganization or request for waiver. In a rate case proceeding, the board may, upon proper showing, adjust the return on equity to reflect any risk associated with the foreign acquisitions.

In Re: Aquila, Inc., Docket No. SPU-03-7, the Board approved a reorganization proposal for Aquila, Inc. (Aquila), that allowed Aquila to pledge Iowa utility assets to secure a credit agreement. The reorganization was required because Aquila's ability to attract capital had been seriously impaired by problems resulting from debt-financed, non-regulated activities, including foreign acquisitions. Aquila's public utility operations, including those in Iowa, were divisions of Aquila, which commingles its public utility finances with non-regulated operations. As a result, the

inability of the non-regulated operations to attract capital affected Aquila's public utility operations.

Based upon the consideration of Aquila operations and finances in Docket No. SPU-03-7, the Board believes that reorganizations that might affect public utility assets should be more closely scrutinized. The rescission of subrule 32.2(4) is one of the actions the Board is proposing to take to assure closer scrutiny of certain public utility reorganizations.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-04-1 is commenced for the purpose of receiving comments on the proposed repeal in the notice attached hereto and incorporated herein by reference in this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of February, 2004.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.76, and 476.77 (2003), the Utilities Board (Board) gives notice that on February 18, 2004, the Board issued an order in Docket No. RMU-04-1, In re: Repeal of Exemption for Reorganization Filing [199 IAC 32.2(4)], "Order Commencing Rule Making." In this rule making the Board proposes to rescind subrule 199 IAC 32.2(4), which exempts certain reorganizations by public utilities from the filing requirements of Iowa Code § 476.77. The support for the proposed repeal is discussed in the Board's "Order Commencing Rule Making" which can be found on the Board's website, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed repeal. The statement must be filed on or before April 9, 2004, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation is not scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion may determine that an oral presentation should be scheduled.

This repeal is intended to implement Iowa Code sections 17A.4, 476.1, 476.76 and 476.77.

The following rescission is proposed.

Item 1. Rescind **subrule 32.2(4)**, which currently states as follows:

32.2(4) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross utility revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to this exemption within 30 days of the closing of the transaction. The notification shall include the dollar amount of the acquisition, a description of the acquisition, and a description of the financing. The public utility shall file on or before March 1 of each year an annual summary of its foreign acquisitions and recent credit rating reports from all major credit rating services.

However, this exemption does not apply if the public utility does not hold an investment grade credit rating from two major credit rating services or if its proposed direct expenditure on the acquisition, including guarantees and financing with recourse to the public utility, exceeds 15 percent of the net book value of the public utility's assets. If the exemption does not apply, the acquisition may not take place without the filing of a proposal for reorganization or request for waiver. In a rate

case proceeding, the board may, upon proper showing, adjust the return on equity to reflect any risk associated with the foreign acquisitions.

February 18, 2004

/s/ Diane Munns

Diane Munns
Chairman